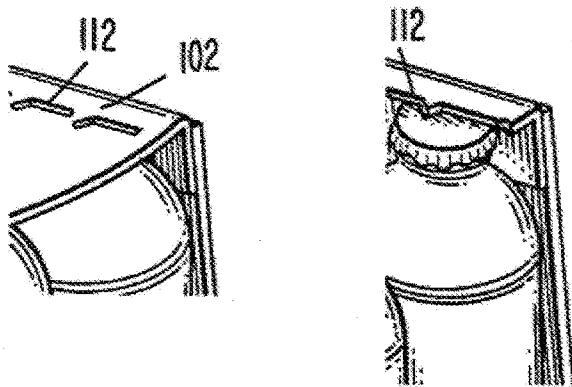


REMARKS

Applicant's counsel thanks the Examiner for the careful consideration given the application. Claims 1-25 are currently pending in the application.

In the most recent Office action, the Examiner objected to the claims as obvious over Wilson (US 4032053) in view of Dutcher (US 4498581). Regarding claim 1, the Examiner states "Wilson discloses a package for containers comprising a bottom panel 12, a first and second side panel 18/20 connected thereto via diametrically opposed first fold lines 14/18 and a first and second upper flap 108/36, connected to the respective side panels via a second and third fold line 30/34, respectively, wherein the first upper flap 108 is located on the second upper flap 36 and at least two openings 104/106 are provided in the first upper flap 108 through which fingers can be inserted for lifting said package."

However, applicant believes the Examiner is mistaking the upper edge 36 of the side panel 20 as a "second upper flap" to be connected to the "first upper flap 108". The upper edge portion 36 of the side panel 20 stays in the same plane as the rest of that side panel 20 when setting up the package (column 2, lines 10-21). In Wilson it is described that the panel 108 forms the upper panel, and that the panel 48 is folded down along the fold line 46 to be connected to the upper edge portion 36 of the side panel 20, by locking recesses and tabs. This is also clear from the drawings, e.g. Figs. 3 and 4 of Wilson, of which two details are inserted here below.



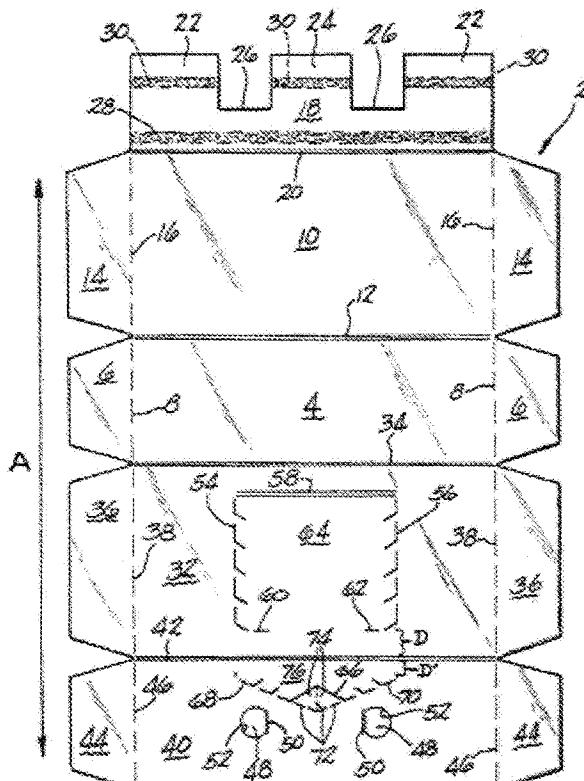
Clearly, the upper panel is entirely "one ply" only, as discussed before. Wilson therefore does not disclose a first and second upper panel, nor a second and third fold line as claimed in claim

1.

Apart from this difference, the Examiner acknowledges that Wilson fails to disclose the further aspects of claim 1 as now presented. The Examiner states, "Wilson does not specifically disclose the second upper flap extends at least between said openings, while, at the location of the second and third fold line over at least one part of the said second and third fold line at least two layers of sheet material are provided, on and/or on both sides of said second and third fold line such that an upper longitudinal edge of at least one of the containers abuts, during use, against the innermost of said two layers of sheet material."

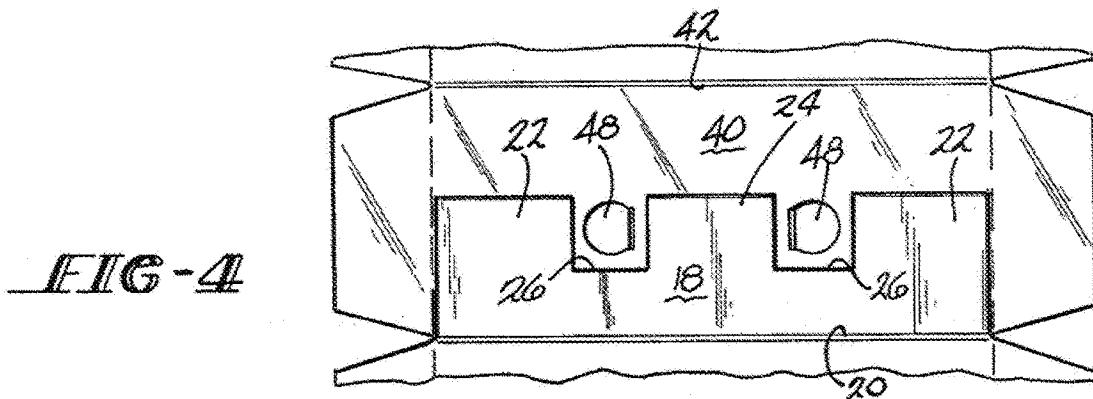
However, the Examiner then argues that such would be known from Dutcher.

Dutcher discloses a panel (Fig. 1) and a package folded there from (Figs. 5 and 6) as shown here below.



In the panel and package of Dutcher, there is disclosed an upper flap 18 which folds over containers in the package, on top of which a first upper flap 40 is folded and glued. The first upper flap 40 has openings for fingers, whereas the second upper flap indeed is at least positioned between the openings when the package is set up. So far, this line of arguing can be followed. However, Applicant then believes that the Examiner is interpreting Dutcher incorrectly. In the present claim 1, applicant claims that the second and third fold lines (being the fold lines between the respective side panels and first and second upper flaps) are at least partly "double layered". In the embodiments shown this is obtained e.g. by an extension 13 extending from the second upper flap 9 in a direction away from the third fold line 8, which is then folded between the first side panel 4 (the upper part 28 thereof) and the containers packaged inside the package. The double layer increases the carrying strength further and especially prevents damage to the package at the point of increased strain where a container abuts the package at or near the second and/or third fold line. This is clear from the panel of e.g. Fig. 1 and the package of e.g. Figs. 5 and 6 and especially Fig. 9-11 of the present application.

The Examiner suggests that such a "double layer" at the second and/or third fold line would be known from Dutcher, which is incorrect. In Dutcher, the second upper flap 18 extends only under part of the width of the first upper flap 40, as can clearly be seen from e.g. Fig. 4 of Dutcher as inserted below.



The first upper flap 40 stops just short of the fold line 20 connecting the second upper flap 18 to the side panel 10, whereas the second upper flap 18 stops well short of the fold line 42 connecting the first upper flap 40 with the side panel 32. Therefore neither the second fold line

42 nor the third fold line 20 is "double layered".

The Examiner argues that it would have been obvious to amend Wilson according to Dutcher since Dutcher would disclose (column 3, lines 7-16 and Figs. 1 and 4) that such would lead to strengthening of the handle. Column 3, lines 7-16 of Dutcher read, "Referring now to FIG. 4, the inner surface of the two-ply wall is shown. It will be noted that the end tabs 22 and the medial tab 24 on the inner top wall panel 18 extend toward the fold line 42 past the mid line of the outer top wall panel 40 so that the push tabs 48 are disposed within the confines of the recesses 26 on the inner top wall panel 18. Thus, the weight-bearing medial portion of the top wall of the carton is two-ply in construction. If desired, the end tabs 22 can be eliminated and only the medial tab 24 can be used."

This only discloses that the top panel formed by the combination of upper flaps 18, 40 is "two ply" over at least the part where the openings are, strengthening the top panel there. It specifically does not disclose extending the second upper panel such that it bridges the fold line 42, nor does it disclose extending the first panel such that it extends over the other fold line 20. Therefore, neither one of these fold lines (when seen as forming the "second" and "third" fold lines of claim 1 of the present invention) is "double ply". In this sense, Dutcher does not disclose more than Wilson already discloses, a partly double layered upper panel comprising the openings for carrying the package. They both do not disclose the double layering of the second and/or third fold lines for preventing excessive stress in these fold lines, due to the contact with the containers when lifting the package at the top panel (at the openings.)

For these reasons, the combination of Wilson with Dutcher is not obvious and even if a person of ordinary skill in the art would combine the two in the way the Examiner suggests, he would still not end up with the claimed invention. Claim 1 is therefore novel and inventive over both Wilson and Dutcher, and non-obvious over the combination. Claim 1 is therefore allowable.

Since claims 2-17 are claims directed to packages, which are directly dependent on claim 1, these claims are also allowable, by reason of their dependency. Since claims 19-25 are directed to a blank for such a novel and inventive package, claims 19-25 are also allowable.

With respect to claim 2, the Examiner argues that Wilson discloses a support flap 48 connected to the top panel 32 and argues that it would have been obvious to provide a similar "support flap"

connected to a/the second upper flap via a fifth fold line, located against the first side panel. As discussed before, Wilson does not disclose a second upper flap as claimed. Therefore, in order to be able to provide a "second support flap" similar to flap 48 to be located against the side panel 20, one would first have to add the entire second upper flap of the present invention, such that it extends over the full width of the first upper flap, in order to be able to provide such "support flap" located against the side panel 20.

It must be considered that in Wilson the flap 48 is not a "support flap" in the sense of the present application. Indeed, in Wilson, the flap 48 is an essential connecting flap to be connected to the vertical side panel 20, in order to be able to close the package as such. Providing a similar panel on the other side would make no sense.

With respect to claim 3, the Examiner states that the "first support flap 48" of Wilson would have been connected to the outside of the side panel 20. This is incorrect; the panel 48 is connected to the inside of panel 40, as shown above.

With respect to claim 4, since neither Wilson nor Dutcher discloses all fold lines as claimed; the Examiner's conclusion is incorrect.

With respect to claim 5, the Examiner argues that the only difference is relative dimensions, and that this would not be patentable, since the package would not perform differently from the prior art. This seems strange since in the application as filed it has been indicated that by providing such closing flaps having at least half the width of the bottom panel (or at least together having at least the full width) they can close off the entire package; thus protecting the containers inside the package further from influences from the outside world. Therefore it does perform differently. In Wilson, clearly the containers are exposed over a substantial part of the outer surfaces (at least the outermost rows) to e.g. sunlight. This can be prevented with a package according to the present invention.

With respect to claim 8, the Examiner argues that it "was known in the art at the time of the invention that making this change will strengthen the structure of the container and prevent items from falling out". However, the Examiner fails to show any proof of such knowledge from the prior art. In retrospect, it may be obvious that these effects are obtained by these features, but that is unallowable hindsight. The features should be proven to be obvious before the invention

was made, which is not shown by the Examiner. Therefore, claim 8 is allowable.

With respect to the "closing flap features" of claims 9-11 the Examiner refers to column 3, lines 18-20, disclosing gluing or stapling the "tuck flaps" in place, if so desired. It does not specifically disclose to which other panel. Moreover, previously the Examiner referred to flaps 58, 76, 78, 88 as "closing flaps" and panels 60, 74, 80, 90 as "corner flaps", whereas the panels 26, 28 would be the "support closing flaps". In Wilson, the tuck flaps are 58, 76, 78, 88, but also 60, 74, 80, 90. In fact they are called "pairs of tuck flaps". The definitions are inconsistent. Moreover, as will be shown herebelow, they do not fulfill the requirements of the respective claims.

In claim 10, applicant has claimed that the lower edges of the closing flaps run approximately parallel to the bottom panel. The Examiner states that this is not disclosed in Wilson (which is true) but that such would have been an obvious modification "because that will improve the overall structure of the container". Again, the Examiner has not shown any proof as to why such would have been obvious. In Wilson, the "lower edges" (if the score lines 66, 70, 84, 94 could be understood as such) of the "closing flaps 58, 76, 78 88 extend at 45 degrees to said bottom panel, which in the panel of Wilson is necessary in order to be able to tuck the "pairs of tuck panels" into the package. Moreover, if in Wilson the "bottom edge" of said closing flaps would indeed have been parallel to the bottom panel, the "corner panels" (tuck panels 60, 74, 80 and 90 would have had to have been provided in the "support closing flaps" (end panels 26, 28) interfering with the possibility of bulging out of the end panels due to the fold lines already provided in the end panels (referred to as "10<sup>th</sup> fold lines" in the drawing included on page 1 of the Office action). Furthermore, in Wilson, the pairs of tuck panels are folded in between the side panels and the containers, not between the end panels and the containers, as is shown in the present invention. Such modification would not have been obvious over Wilson.

With respect to claim 11, the Examiner states that overlapping closing flaps would have been obvious over Wilson. It is unclear how Wilson would have to have been amended in order to comply. Indeed, in order for the "closing flaps" 58, 76, 78, 88 to overlap at least partly in the package, the fold lines 66, 70, 84, 94 would have to be extended. Since the panels are folded into the package, between the side panels and the containers (see column 3, lines 14-18), they cannot overlap.

With respect to claim 12, the Examiner states again that such modification would be obvious

over Wilson since "it was known in the art at the time of the invention that making this change will strengthen the structure of the container" but again fails to show any proof. In order to connect the first (and only) upper flap of Wilson to the "closing flaps" or "side panels" (end panels 26, 28) in Wilson such upper closing flaps would have to be bridging the entire space between the first upper panel 108 and the upper edge of the end panels 26, 28 (the upper closing flaps could not be connected to the "closing flaps" 58, 76, 78, 88 since they are tucked in between the side panels 16, 20 and the containers and thus out of reach for any such upper closing flaps.) By providing such "upper closing flaps" in Wilson, connected to the end panels 26, 28, again the "bulging" of the end panels would be at least counteracted and possibly even prevented. Moreover, it would significantly change the overall appearance of the package of Wilson, whereas, more importantly, such panels would seriously interfere with the opening of the package and taking out of the containers. Indeed, additional tear lines would have to be construed, for which there is no disclosure whatsoever. Such "upper closing flaps" would therefore be contrary to the teaching of Wilson and are therefore non-obvious.

With respect to claim 14, the Examiner again incorrectly refers to the panel 36 as "second upper flap"; it is part of the side panel 20 and therefore does not form an upper flap.

With respect to claim 16, again the Examiner asserts that such modification would be obvious over Wilson, since "it was known in the art at the time of the invention that making this change will strengthen the structure of the container", but again fails to show any proof. In Wilson, bottles are packaged which would counteract any such modification, since bottles are cylindrical almost up to the lid.

With respect to claims 17 and 18, the Examiner more or less states that "it would have been obvious to try" to use such light (thin) cardboard for packages according to Wilson. This might be feasible to try, but the person of ordinary skill in the art would certainly fail, without using the claimed invention, since the strength would be insufficient.

With respect to claims 19 and 21-25, the Examiner more or less reasserts the objections raised against the package claims as discussed before. These claims are novel and non-obvious for the same reasons, as well as being dependent on non-obvious claim 1.

For all the reasons discussed above, it is clear that the claims as now presented are novel,

inventive and non-obvious over the prior art. A Notice of Allowance is therefore respectfully requested. If any additional fees are required by this communication, please charge such fees to our Deposit Account No. 16-0820, Order No. VOB-38839.

Respectfully submitted,  
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